IN THE

Supreme Court of the United States

October Term, 1939.

No. .....

LUMBERMENS MUTUAL CASUALTY COMPANY, a corporation,

Petitioner,

vs.

MRS. LEOTIA E. McIVER, JEFF CLARK, GRACE VAUGHN, a minor, and LORAINE JOHNSON,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Opinion Below.

The opinion of the District Court is reported in 27 Fed. Supp. 702. The opinion of the United States Circuit Court of Appeals for the Ninth Circuit was filed March 8, 1940, and is not yet reported in the Federal Reporter.

II.

Jurisdiction.

1. The judgment of the Circuit Court of Appeals for the Ninth Circuit was filed March 8, 1940, and is not yet reported in the Federal Reporter.

2. A Petition for Rehearing was denied April 13, 1940.

3. This Petition for a Writ of Certiorari is filed within three months after the filing of the final judgment of the Circuit Court of Appeals.

4. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, 28 U. S. C., Sec. 347.

5. The following cases, among others, sustain the jurisdiction:

State Farm Mutual Automobile Ins. Co. v. Coughran (1938), 303 U. S. 485, 82 L. Ed. 970;

Aetna Ins. Co. v. United Fruit Co., 304 U. S. 430;

St. Paul Fire & Marine Ins. Co. v. Buchmann, 285 U. S. 112, 115;

Landrex v. Phoenix Mutual Life Ins. Co., 291 U. S. 491, 90 A. L. R. 1382;

Travelers' Protective Ass'n v. Primson, 291 U. S. 576, 78 L. Ed. 999.

Other references:

Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States (1936), Sec. 304, page 610, et seq.; Sec. 314, page 638; Sec. 323, page 662, et seq.;

Rules of the Supreme Court of the United States, Rule 38 (5b);

Frankfurter & Fisher, "The Business of the Supreme Court at the October Term, 1935 and 1936";

51 Harvard Law Review, 577, 594, 595;

Frankfurter & Hart, Jr., "The Business of the Supreme Court at the October Term, 1933";

48 Harvard Law Review, 238, 268, 271, 272.

III.

Statement of the Case.

The essential facts of the case are stated in the accompanying Petition for a Writ of Certiorari, and in the interest of brevity are not herein reviewed. Any necessary elaboration will be made in the course of the argument which follows.

IV.

Specification of Errors.

The Circuit Court of Appeals erred in each of the following particulars:

1. In failing to hold that the case of *State Farm Mutual Automobile Ins. Co. v. Coughran, supra,* was applicable and binding in the case at bar and necessitated a reversal of the judgment of the District Court.

2. In holding that the finding of the District Court to the effect that Jeff Clark was the "operator" of the car at the time of the accident excluded the conclusion that Grace Vaughn, the minor, may also have been the "driver" or "operator" to such an extent as to bring the case within the inhibitions of *State Farm Mutual Automobile Ins. Co. v. Coughran, supra.*

3. In failing to hold that Finding of Fact No. 5 and Finding of Fact No. 10 are clearly inconsistent to the extent that the judgment of the District Court could not be said to be sustained by these Findings.

4. In failing to hold that Finding of Fact No. 10 was in effect a conclusion of law and not a finding of fact, and in failing to hold that as a consequence the judgment was not sustained by Finding of Fact No. 5.

5. In failing to examine all of the record to determine whether Finding of Fact No. 5 and Finding of Fact No. 10 were or were not "clearly erroneous," giving due regard "to the opportunity of the trial court to judge of the credibility of the witnesses," as permitted by Rule 52(a), Rules of Civil Procedure.

6. In failing to reverse the judgment and remand for a trial *de novo* if the Findings were inconsistent.

7. In placing upon the "exclusionary clause" of the insurance contract in question a strained and unwarranted construction, which is contrary to the plain, unambiguous, common and popular meaning of the language of the contract and which in effect vitiates the holding of the appellate courts of the State of California with regard to the validity and effect of said provision.

V.

Summary of Argument.

1.

THE CIRCUIT COURT OF APPEALS WAS BOUND TO FOLLOW THE DECISION OF THIS COURT IN STATE FARM MUTUAL AUTOMOBILE INS. CO. V. COUGHRAN, AS IDENTICAL LOCAL STATUTES, DECISIONS OF LOCAL COURTS, PROVISIONS OF THE INSURANCE CONTRACT AND FACTUAL SITUATIONS WERE INVOLVED.

2.

PRESENTED WITH AN EVIDENT INCONSISTENCY IN THE FINDINGS AS WELL AS A STUDIED ATTEMPT BY THE TRIAL JUDGE TO FRAME HIS FINDINGS SO AS TO BRING THE CASE OUTSIDE THE CLEAR CONFINES OF STATE FARM MUTUAL AUTOMOBILE INS. CO. V. COUGHRAN, IT WAS THE REASONABLE DUTY OF THE CIRCUIT COURT OF APPEALS TO APPLY THE AUTHORITY GRANTED TO IT BY RULE 52(a) AND EXAMINE THE ENTIRE RECORD TO DETERMINE WHETHER THE EVIDENCE SUPPORTED THE FINDINGS AND WHETHER IN TURN THE FINDINGS SUPPORTED THE JUDGMENT.

3.

THE CASE AT BAR PRESENTS IMPORTANT QUESTIONS INVOLVING THE PROPER INTERPRETATION OF UNIVERSALLY USED PROVISIONS OF INSURANCE CONTRACTS, WHICH EXTEND BEYOND THE PALE OF PRIVATE CONTRACTS TO THE BROADER FIELD PERTAINING TO THE PROPER APPLICATION OF STATE MOTOR VEHICLE REGISTRATION AND LICENSE LAWS, WHICH ARE OF VITAL PUBLIC CONCERN.

VI.

ARGUMENT.

1.

The Circuit Court of Appeals Was Bound to Follow the Decision of This Court in State Farm Mutual Automobile Ins. Co. v. Coughran, as Identical Local Statutes, Decisions of Local Courts, Provisions of the Insurance Contracts and Factual Situations Were Involved.

(a) The local statutes in both the *Coughran* case and the case at bar were identical, namely:

> "Applicable sections of the California Vehicle Act,—Stats. 1923, pp. 518, 519, 536; Stats. 1927, p. 1427; Stats. 1931, p. 2108—follow:
>
> 'Section 1. The following words and phrases used in this act shall have the meanings here ascribed to them.'
>
> * * * * * * * * *
>
> 'Sec. 18. *"Operator."* Every person who drives, operates or is in actual physical control of a motor vehicle upon a public highway.'
>
> 'Sec. 76. *Unlawful to employ unlicensed chauffeur.* No person shall employ for hire as a chauffeur of a motor vehicle, any person not licensed as in this act provided. No person shall authorize or knowingly permit a motor vehicle owned by him or under his control, to be driven by any person who has no legal right to do so in violation of the provisions of this act.'
>
> 'Sec. 58. *Operators and chauffeurs must be licensed.* "(a) It shall be unlawful for any person to drive a motor vehicle upon any public highway in this state,

whether as an operator or a chauffeur, unless such person has been licensed as an operator or chauffeur; except such persons as are expressly exempted under this act.'' (Exception not applicable here.)

'Sec. 64. *What persons shall not be licensed as operators or chauffeurs.*

'(a) An operator's license shall not be issued to any person under the age of sixteen years and no chauffeur's license shall be issued to any person under the age of eighteen years, provided that an operator's license may be issued to any minor over the age of fourteen years and less than sixteen years of age upon special application and statement of reasons by the parent or guardian of such minor.'" (*State Farm Mutual Automobile Ins. Co. v. Coughran,* 303 U. S. 485, 488.)

To which recital may properly be added the observation that in California all persons must submit to an examination of their driving ability in order to demonstrate their qualifications to safely drive an automobile:

"267. Examinations for License. Upon application for an original license the department shall require an examination of the applicant and shall make provision therefor being an officer or employee or authorized representative of the department in the county wherein the applicant resides within one week after such application is presented to the department.

"268. Scope of Examination. The examination shall include a test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways, his understanding of traffic signs and signals and the applicant shall be required to give an actual demonstra-

tion of his ability to exercise ordinary and reasonable control in operating a motor vehicle by driving the same under the supervision of an examining officer. Said examination shall also include a test of the hearing and eyesight of the applicant and such other matters as may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways and whether any ground exists for refusal of a license under this code." (Vehicle Code of California, Secs. 267 and 268.)

(b) The "exclusionary clauses" of both policies are practically identical:

1. The policy in the *Coughran* case:

"(1) *Risks Not Assumed by This Company.* The Company shall not be liable and no liability or obligation of any kind shall attach to the Company for losses or damage: . . . (A) . . . (D) Unless the said automobile is being operated by the Assured, his paid driver, members of his immediate family, or persons acting under the direction of the Assured; (E) Caused while the said automobile is being driven or operated by any person whatsoever either under the influence of liquor or drugs or violating any law or ordinance as to age or driving license;." (*State Farm Mutual Automobile Ins. Co. v. Coughran*, 303 U. S. 485, at 487.)

2. The policy in the case at bar:

"This policy does not apply: . . .

(c) Under any of the above coverages while the automobile is operated by any person under the age of fourteen years, or by any person in violation of any state, federal or provincial law as to age appli-

cable to such person, or to his occupation, or by any person in any prearranged race or competitive speed test." [R. 18.]

(c) Both contracts were subject to the judicial approval of the courts of the local jurisdiction:

"This rule of law is consistent with the requirement of the Civil Code, section 1636, that a contract must be interpreted so as to give effect to the mutual intention of the parties as it existed at the time of the contract. There can be no doubt that the insurer intended to eliminate liability in such a case as the present one by inserting in its contract the exclusion clause here questioned. It is equally clear that the assured in reading the exclusion clause would have believed that she was not protected in the event she permitted her minor son to drive her automobile without obtaining a license, which is contrary to the provisions of the Vehicle Code. There is no valid reason why the loss occasioned by assured's permitting her son to violate a state law should be shifted to defendant." (*Brown v. Travelers Insurance Co.*, 31 Cal. App. (2d) 122, hearing in California Supreme Court denied.)

(d) The facts in both cases are strikingly similar.

(1) In both cases an unlicensed minor, just prior to the impact, was in undisputed full control of all the driving apparatus of the automobile and seated in the driver's seat.

2. In both cases the insured (or the agent of the insured) was seated next to the unlicensed minor.

3. In both cases immediately prior to the impact as the imminent danger was forseen by the adult, the adult

made an effort to avoid the accident by seizing the steering wheel.

4. In both cases the resulting accident followed the interference by the adult in the act of driving by the minor.

The only possible difference is that in the case at bar, according to the testimony of Jeff Clark, believed by the trial judge, Jeff Clark made an effort to reach the emergency brake lever.

This *single fact*, to-wit, attempt to apply the emergency brake, is all that the trial court relied upon to avoid application of this Court's adjudication in the *Coughran* case, and it is clearly unreasonable to suppose that if the findings in the *Coughran* case had included the single additional element that Mrs. Anthony had made an effort to reach the emergency brake, that this Court in its Opinion would have concluded that Mrs. Anthony had solely operated the automobile.

(e) The Finding by the trial court in the *Coughran* case that there was "joint control" of the automobile by the minor and the insured, and the failure of the trial court in the instant case to find that the minor "operated" the car in question, does not make the principles of the *Coughran* case any less binding in the instant case.

In the *Coughran* case the Circuit Court of Appeals found a conflict between Finding III (that the wife of the insured "operated" the car), and Finding XII (that the car was being jointly "operated" by the minor and the wife of the insured). (*State Farm Mutual Automobile Ins. Co. v. Coughran*, 92 Fed. (2d) 239.)

In the case at bar Finding No. 10 is "that the automobile at the time of the accident was operated by Jeff Clark, was not operated by any person in violation of the Vehicle Code of the State of California, that said automobile at the time of the accident was not operated by said Grace Vaughn."

But when Finding No. 5 is examined, we find the following to contradict the conclusion in Finding No. 10:

> ". . . that for about twenty minutes prior to the accident, defendant Jeff Clark had been giving defendant Grace Vaughn a lesson in driving; that Grace Vaughn was seated at the extreme left-hand side of the front seat behind the wheel; that Jeff Clark was seated next to Grace Vaughn in the front seat, and between Grace Vaughn and Grace Vaughn's sister, Maxine, who was seated at the extreme right-hand side of the front seat; that defendant Jeff Clark was closer to Grace Vaughn than to Maxine Vaughn and his back was turned to Maxine as he sat facing Grace, giving her directions in handling the car; that the car proceeded in a westerly direction on Fourteenth Street and approximately eighty feet from the intersection, the car was traveling down an incline which sloped towards Montana Street at a speed of about twenty-five miles per hour; that approximately eighty feet from the intersection Grace Vaughn applied the brakes; that the automobile slowed momentarily; that the brakes held for just a moment and then released; that Clark glanced down and saw that Grace Vaughn's foot was on the brake pedal and that the brake pedal was depressed to the floor board, and that the car's speed was accelerating; . . . that when the automobile described in said policy was within approximately forty feet to the east of said stopped westbound automobiles, Jeff Clark seized the

steering wheel with both hands and swerved the automobile . . . past said stopped automobiles; that after said impact the automobile described in the policy was steered by Jeff Clark across the intersection and back to the north side of said Fourteenth Street where he brought it to a stop; that prior to the impact and while Jeff Clark was steering the automobile described in said policy, he reached, with his left hand, across Grace Vaughn's lap, for the emergency brake lever of the automobile described in said policy and applied the said emergency brake lever; that said emergency brake lever is located on the left-hand side of the steering wheel of the automobile described in said policy; that after Clark seized the steering wheel Grace Vaughn did not attempt to steer the car or to operate the clutch or brake pedal; . . ."

Respecting the recitals in Finding No. 5 this one additional observation should be made: the single physical and immutable fact that an automobile traveling 20 to 25 miles per hour, which is the admitted speed of Clark's automobile at all times in controversy here, covers from 30 to 37 feet per second, would in itself make vulnerable the conclusions drawn by the Court below. It is to be recalled that Clark's vehicle was only 80 feet from the point of impact [R. 104] when his attention was first called to the fact that the brakes were not functioning by Grace Vaughn. At that point she was in full control of the automobile. At such admitted speed the automobile would traverse said 80 feet in 2½ to 3 seconds' time, hardly more than two winks of the eye. Now, can it be supposed or soundly inferred that within said 2½ to 3 *seconds' time*, Clark from his position in the crowded front of the automobile could assume such a degree of complete and absolute control of the automobile to the extent of

excluding any premise of control on the part of Grace Vaughn? To say yes is absolutely incredible and beyond the pale of judicial reasoning.

The obvious confusion and inconsistency apparent in the findings in both the case at bar as well as in the *Coughran* case is due to the attempt to shrivel to attrition the meaning of "driving" and "operating," something never intended to be done.

As Mr. Justice McReynolds so aptly points out in the *Coughran* case:

> "When read together no material conflict exists between findings III and XII; there is no real difficulty in understanding the circumstances to which they are addressed. The first contains statements concerning the conduct of one in authority; the second describes in detail what really took place at the moment of collision. The word 'operate' has varying meanings according to the context. Webster's New International Dictionary. One may operate singly with his own hands, or jointly with another, or through one or more agents." (*State Farm Mutual Automobile Ins. Co. v. Coughran,* 303 U. S. 485, at 491.)

The Circuit Court of Appeals has likewise overlooked the extremely important point that even had Jeff Clark been in the rear seat at the time of the accident and had never touched the wheel, Jeff Clark, as the insured, would for many purposes be considered as having been the "operator" of the automobile. For example, in the case of *Bosse v. Marye*, 80 Cal. App. 109, 250 Pac. 693 (Dec. 1, 1936), the facts were that at the time of the accident in question the defendant's automobile was being driven by Helen Marye, an unlicensed minor, with the permission

of Claudine Spreckles, who sat with her on the front seat. The Spreckles girl was a licensed automobile operator, and, being a minor, the license was issued upon the application of her father who was also a defendant, the state statute imputing any negligence of the minor to the parent upon whose application the license was issued. The defendant father's contention was that he could not be held liable because the automobile was neither driven nor operated by his daughter at the time of the accident. In response to this contention the opinion states:

> "The liability of a parent under the statute mentioned is not limited, however, to negligent acts of the minor resulting from 'driving' an automobile, the statute employing the broader term 'operating or driving,' showing a clear intention to include within such liability any negligent act which is the direct result of the privilege extended by the state to said minor, under his or her operator's license to operate an automobile upon a public highway. 'To drive' is defined as meaning, 'to impel the motion and quicken'; whereas, 'to operate' means 'to direct or superintend.' (Century Dictionary.) * * * We therefore conclude that, *although not driving the automobile* at the time of the accident, Miss Spreckles was nevertheless in control of its movements, *and was operating the same* over the highway under the authority of her license; and that being so, that she was primarily responsible jointly with Miss Marye for its negligent operation."

To further demonstrate the mischief which would follow the hypertechnical interpretation of the terms "driver" and "operator" sanctioned by the Circuit Court of Ap-

peals, Jeff Clark, because he applied the emergency brake and manipulated the steering wheel, could be guilty of:

> "Sec. 510. Speeding—yet he never touched the accelerator.
>
> Sec. 546. Failure to give hand signals before turning, starting or stopping, notwithstanding that because of his position in the automobile it would be physically impossible to so signal.
>
> Sec. 596. Driving while there is someone in the front seat which interferes with the driving mechanism of vehicle. If Grace Vaughn was not the driver obviously her conceded position behind the steering wheel prevented Jeff Clark from full freedom to disengage the clutch.
>
> Sec. 597. Failure to sound horn when traveling upon mountain highways and approaching a curve where view is obstructed within 200 feet;."

and other sections of said California Vehicle Code.

So, tested by the foregoing standards it is obvious that the term "driver" or "operator" was not to secure the narrow interpretation placed by the trial court and adopted by the appellate court. It is to receive that interpretation which expresses the general understanding that is ascribed to the term. That interpretation petitioner submits is that a "driver" or "operator" is the person who is behind the steering wheel and in the common and convenient position to apply and be available to apply the driving devices to start, stop and guide the automobile. Thus interpreted it is noted that the term "driver" or "operator" fits into and makes workable all of the provisions of the Vehicle Code of California with reference to the rules of the road (Sections 500 to 598 generally).

The crucial point is that the determining factor does not center about the singleness or jointness of the minor's participation in the driving process, but rather upon the obvious fact that the insured permitted the car to be "driven" or "operated" at any time during the imminent period before the accident, *by an unlicensed minor*, thus creating a violation of the laws of the State of California, both as to himself as well as to the minor. The exact degree of nicety of the "driving" done by the minor, it would clearly seem, is of secondary import. The meat and marrow of the *Coughran* case is contained in the following few sentences:

> "If, as found, the automobile was being jointly operated by the wife and the girl the risk was not within the policy. The latter was forbidden by law to operate or drive jointly or singly. If the wife was in control the statute forbade her to permit driving by the girl. In any view, when the collision occurred the car was being driven or operated in violation of the statutes." (*State Farm Mutual Automobile Ins. Co. v. Coughran*, 303 U. S. 485, at 491.)

An examination of the dissenting opinion by Justice Wilbur (Senior Circuit Court Judge, who did not participate in the instant case) in the case of *State Farm Mutual Automobile Ins. Co. v. Coughran*, 92 Fed. (2d) 239, shows clearly that the Supreme Court adopted his view to the effect that the crucial issue was the violation of the state laws by the insured as well as by the minor. [Excerpts from this dissenting opinion as well as from the cogent dissent of Justice Hinman in the case of *O'Connell v. New Jersey Fidelity & Plate Glass Co.*, 193 N. Y. Supp. 913, are included in the Appendix.]

If this construction of the holding in the *Coughran* case is correct, then the Circuit Court of Appeals in the instant case misconceived its duty to be bound thereby.

2.

Presented With an Evident Inconsistency in the Findings as Well as a Studied Attempt by the Trial Judge to Frame His Findings So as to Bring the Case Outside the Clear Jurisdiction of This Court in State Farm Mutual Automobile Ins. Co. v. Coughran, It Was the Reasonable Duty of the Circuit Court of Appeals to Apply the Authority Granted to It by Rule 52(a) and Examine the Entire Record to See Whether the Evidence Supported the Findings and in Turn Whether the Findings Supported the Judgment.

(a) Rule 52(a), Rules of Civil Procedure, substantially adopts the equity practice warranting an appellate court in examining the entire record to determine whether the findings are sustained by the evidence giving due regard to the "opportunity of the trial court to judge of the credibility of the witnesses." (Rule 52(a), Rules of Civil Procedure.)

Although it may be that this rule is not intended to go as far as the former equity rule in giving the appellate court complete supervisory power, there can be no question but that the rule is intended to substantially enlarge the duty and the power of the reviewing court so as to enable it to examine the record and determine the correctness of the findings as reflected by the record. (Notes of Advisory Committee on Rules of Civil Procedure, pp. 46-48; 2 Edmunds Federal Rules of Civil Procedure, p. 1277, *et seq.*; Balter, Rules of Civil Procedure, p. 106, and references cited in footnote 92; *U. S. v. Appalachian Power Co.*, C. C. A. 4, 104 Fed. (2d) 769; *Guilford Construction Co. v. Biggs*, C. C. A. 4, 102 Fed. (2d) 46.)

In the light of this enlarged right of the appellate court under Rule 52(a), the Circuit Court of Appeals in the instant case was clearly wrong in foreclosing a review of the record by simply relying upon the statement of this Court in *State Farm Mutual Automobile Ins. Co. v. Coughran*, that,

> "Under applicable statutes and repeated rulings here, the matter open for consideration upon the appeal was whether the findings of the trial court supported its judgment. To review the evidence was beyond the competency of the court. . . ." (303 U. S. 485, 487.)

when it is patent that this statement was made before the effective date of Rule 52(a), in the light of which the binding effect of the interdict is lost.

(b) There were particular circumstances in the case at bar which should have impelled a close review of the entire record by the Circuit Court of Appeals.

If the Circuit Court of Appeals had been inclined to closely examine the transcript of the record it would have been plain to the Court that at the close of the reception of evidence the trial judge had before him and considered the ruling of this Court in *State Farm Mutual Automobile Ins. Co. v. Coughran*, and studiously sought to avoid its application by the process of giving full credence to the last moment story of Jeff Clark (admittedly impeached by two separate previously signed statements), rather than accepting the testimony of Grace Vaughn, "a fourteen-year-old child." [Tr. 57-145.] Obviously the trial judge did not like the doctrine of *State Farm Mutual Automobile Ins. Co. v. Coughran* and proceeded to interpret the evidence so as to justify findings which in his view would thwart the clear rulings of this Court.

In spite of this effort, a vital inconsistency in the findings resulted. Finding No. 10 cannot be considered a finding of fact at all; it is a mere conclusion of law, viz.: who "operated" the car and whether it was "operated" by any person "in violation of the Vehicle Code of the State of California." The only true finding of fact is Finding No. 5, which, despite the trial court's individualistic interpretation of the evidence, nevertheless clearly brings the facts of the case at bar within the purview of *State Farm Mutual Automobile Ins. Co. v. Coughran.* For the sake of brevity a detailed analysis of Finding No. 5 will not be repeated. (See *supra*, page 4.)

(c) Inferior federal courts now reflect conflict as to proper application of Rule 52(a).

An examination of the more recent decisions in which the application of Rule 52(a) was in issue indicates a lack of uniformity. The conflict is as to whether under Rule 52(a) the findings of the trial judge must be sustained if they are supported by any "substantial evidence," or whether they must be sustained unless they are "clearly erroneous." Obviously the two criteria are not the same. Nevertheless, both tests have been applied by lower federal courts interpreting Rule 52(a).

Sundt v. Truman Oil Co., C. C. A. (5), 107 Fed. (2d) 762 ("substantial evidence");

Manning v. Gagne, C. C. A. (1), 108 Fed. (2d) 718 ("clearly erroneous").

Particularly confusing has been the attitude of the Circuit Court of Appeals for the Ninth Circuit. Compare, *Anglo-California National Bank v. Lazard*, C. C. A. (9) (1939), 106 Fed. (2d) 693, and *Occidental Life Ins. Co. v. Thomas*, C. C. A. (9) (1939), ~~109~~ 107 Fed. (2d) 876, and particularly note concurring opinion of Haney, J., in both cases. The case at bar presents a timely and clear-cut opportunity for this Court to indicate the proper application of Rule 52(a).

3.

The Case at Bar Presents Important Questions Involving the Proper Interpretation of Universally Used Provisions of Insurance Contracts, Which Extend Beyond the Pale of Private Contracts to the Broader Field of Proper Application of State Motor Vehicle Registration and License Laws, Which Are of Vital Public Concern.

The legislation enacted in the Vehicle Code in California, already referred to, is impliedly enacted in each contract of insurance by law. With the current trend to avoid automobile collision casualties by the legislative requirement to examine the driving ability of all persons who seek the privilege to drive, it cannot be said that a provision in a policy of insurance which prohibits unlicensed minors from driving is in any sense unfair.

It was observed by the Court in *Phillips v. New Amsterdam Casualty Co.*, 190 So. 565, when speaking of a provision in the policy which excluded coverage when the automobile was driven by an unlicensed minor that:

> "In fact, it is our opinion that the clause favors public policy in that it encourages the enforcement of the laws of this state with reference to the operation of motor vehicles on streets, public roads and highways of the state."

It is therefore of considerable public concern that the "exclusionary clauses" in the standard casualty insurance policies receive uniform interpretations. Strained deflection from the clear intent of the decision of this Court in *State Farm Mutual Automobile Ins. Co. v. Coughran* should be halted before further conflict and confusion results.

Affirmance of the decision of the Circuit Court of Appeals would cast doubt upon the meaning of innumerable statutes and insurance contracts and would in effect amount to the overruling of the previous decision of this Court in *State Farm Mutual Automobile Ins. Co. v. Coughran.*

In conclusion it is respectfully submitted that this Court should issue its Writ of Certiorari to the United States Circuit Court of Appeals in this action.

May, 1940.

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